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### *Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

13 ROBERT ALEXANDER KASEBERG,  
14 Plaintiff,  
15 v.  
16 CONACO, LLC; TURNER  
17 BROADCASTING SYSTEM; TIME  
18 WARNER, INC.; CONAN O'BRIEN;  
19 JEFF ROSS; MIKE SWEENEY; DOES  
1-50, inclusive,  
Defendants.

CASE NO.: 15-CV-01637-JLS-DHB  
Hon. Janis L. Sammartino  
**JOINT MOTION TO AMEND THE  
SCHEDULING ORDER TO  
FURTHER EXTEND PRETRIAL  
DEADLINES**

1 Pursuant to Fed. R. Civ. P. 16(b)(4) and Local Rule 16.1.b, Defendants  
2 Conaco, LLC, Turner Broadcasting System, Inc., Time Warner Inc., Conan O'Brien,  
3 Jeff Ross, and Mike Sweeney (collectively, "Defendants"), and Plaintiff Robert  
4 Alexander Kaseberg ("Plaintiff") (collectively, the "Parties"), by and through their  
5 counsel of record, hereby stipulate, agree, and jointly move the Court to amend its  
6 Scheduling Order Regulating Discovery and Other Pre-Trial Proceedings (the  
7 "Scheduling Order") (ECF No. 29), as modified by the Court's February 15, 2017  
8 Order (ECF No. 92), to extend pre-trial deadlines, as requested herein.

9 **I. RELEVANT BACKGROUND**

10 On February 23, 2016, this Court issued the Scheduling Order. ECF No. 29. At  
11 the request of the Parties, this Court modified the Scheduling Order to extend the  
12 deadline to file pretrial motions to February 6, 2017. ECF No. 64. On February 3,  
13 2017, Defendants filed their Motion For Summary Judgment And/Or Partial  
14 Summary Judgment Or, In The Alternative, Summary Adjudication (the "Summary  
15 Judgment Motion"). ECF No. 70. On February 15, 2017, the Court granted the  
16 Parties' stipulation to further modify the Scheduling Order to allow the parties to  
17 complete their briefing and receive a ruling on the Summary Judgment Motion before  
18 commencing with remaining pretrial obligations. ECF No. 92.

19 The Court heard arguments on Defendants' Summary Judgment Motion on  
20 April 6, 2017. *Id.* Prior to hearing arguments, the Court read a tentative ruling, which  
21 stated:

22 "The court is tentatively inclined...to grant Defendants'  
23 motion for summary judgment regarding the UAB Joke, the  
24 Delta Joke, and the Tom Brady Joke; deny Defendants'  
25 motion for summary judgment regarding the Washington  
26 Monument Joke and the Jenner Joke; grant Defendants'  
27 motion for summary adjudication that the jokes are only  
28 entitled to thin protection; and, finally, deny Defendants'  
Declaration of Nicholas Huskins In Support of the Parties'  
Joint Motion to Further Extend Pretrial Deadlines, Ex. 1  
(Hearing Tr. at 12:8-15).

1 In addition, the Court requested additional briefing on issues relating to Fed. R.  
 2 Civ. P. 37(c). ECF No. 122. The Parties submitted their supplemental briefing on  
 3 April 21, 2017. ECF Nos. 124 - 127.

4 In light of Defendants' pending Summary Judgment Motion, the Court's  
 5 tentative ruling, and Plaintiff's counsel's unavailability from June 18-30, 2017 the  
 6 Parties seek to extend the remaining pretrial deadlines as follows:

| <u>Matter</u>  | <u>Current Deadline</u> | <u>Proposed Deadline</u> |
|--|-------------------------|--------------------------|
| Memoranda of Contentions of Fact and Law, and other action required by Local Rule 16.1(f)(2). ECF No. 29, ¶ 10.                              | May 11, 2017            | July 13, 2017            |
| Pre-trial disclosure requirements of Fed. R. Civ. P. 26(a)(3). ECF No. 29, ¶ 11.   | May 11, 2017            | July 13, 2017            |
| Conference of counsel and action required by Local Rule 16.1(f)(4). ECF No. 29, ¶ 12.  | May 18, 2017            | July 20, 2017            |
| Plaintiff's proposed pretrial order due to Defendants. ECF No. 29, ¶ 13.   | May 25, 2017            | July 27, 2017            |
| Proposed Pretrial Conference Order and any objections to any other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures. ECF No. 29, ¶ 14. | June 1, 2017            | August 3, 2017           |
| Final Pretrial Conference before the Honorable Janis L. Sammartino. ECF No. 29, ¶ 15.  | June 8, 2017            | August 10, 2017          |

1        **II. STATEMENT OF GOOD CAUSE**

2        Because the Defendants' Summary Judgment Motion remains pending before  
3 the Court, the same justifications raised in the Parties' previous stipulation concerning  
4 judicial economy and efficiency still apply. Indeed, the Parties wish to avoid  
5 burdening the Court and incurring unnecessary expenses preparing pretrial  
6 disclosures and filings on issues that may be settled and/or disposed of before trial.

7        If the final order is in line with the tentative as stated above, it will streamline  
8 the Parties' pretrial preparation. For example, witness testimony, evidence and trial  
9 exhibits, and arguments or contentions offered in pretrial filings regarding any jokes  
10 dismissed on summary judgment may be limited or unnecessary. Similarly,  
11 competing jury instructions and pretrial filings disputing whether "substantial  
12 similarity" or "virtual identity" is the applicable standard of comparison in a  
13 copyright infringement analysis may be avoided.

14       The Parties recognize that the Court's tentative ruling is not a final ruling. The  
15 Parties further recognize that the supplemental briefing submitted by the Parties may  
16 alter these issues, particularly as to the Tom Brady and UAB Jokes. Nevertheless, the  
17 ruling is likely to eliminate, narrow, and/or clarify what issues are left for trial. Such  
18 guidance will facilitate a more focused and effective pre-trial preparation, whether or  
19 not the ruling follows the tentative. This will necessarily allow for a more efficient  
20 expenditure of both judicial and client resources. As deadlines for potentially-  
21 impacted pretrial obligations begin May 11, 2017, an extension is justified to allow  
22 the Court time to issue its order, and allow the Parties time to consider the impact of  
23 the order before proceeding with the remaining pretrial obligations.

24       Finally, the Parties agree the proposed amendment to the Scheduling Order does  
25 not present any prejudice. Extending the aforementioned deadlines equally impacts  
26 Plaintiff and Defendants, as both must comply with the remaining pre-trial obligations,  
27 and the order will impact the Parties' preparation equally. As no trial date has been set,  
28 an extension of pre-trial deadlines will not result in unfair delay to any party.

The Parties submit that they have been reasonably diligent in adhering to current deadlines, and that the proposed extension is requested purely to facilitate an efficient preparation of pretrial disclosures and filings. As this motion is brought in good faith and in the interest of efficiency for the Court, the Parties, and counsel, and not for delay or any improper purpose, good cause exists to further extend the remaining pretrial deadlines, as requested herein.

### III. CONCLUSION

Based on the foregoing, the Parties respectfully request that this Court, for good cause, enter an order further extending the pretrial deadlines as requested herein, or a corresponding adjustment of all remaining pretrial deadlines following a final order on Defendants' Summary Judgment Motion.

DATED: May 6, 2017

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AVCHEN & SHAPIRO LLP

By: /s/ Erica J. Van Loon  
PATRICIA L. GLASER  
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REX HWANG  
NICHOLAS E. HUSKINS  
*Attorneys for Defendants*

DATED: May 6, 2017

By: /s/ Jayson M. Lorenzo  
JAYSON M. LORENZO  
*Attorney for Plaintiff*

## **SIGNATURE ATTESTATION**

2 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative  
3 Policies and Procedures Manual for the United States District Court for the Southern  
4 District of California, the undersigned confirms that all other signatories listed, and on  
5 whose behalf the filing is submitted, concur in the filing's content and have  
6 authorized the filing.

/s/ Erica J. Van Loon  
ERICA J. VAN LOON

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